STEBBINS COMMUNITY ASSOCIATION

IBLA 89-199 Decided March 12, 1991

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting in part village selection application F-14939-C and confirming legislative approval of Native allotment F-16407.

Affirmed.

1. Alaska: Native Allotments--Alaska National Interest Lands Conservation Act: Native Allotments--Alaska National Interest Lands Conservation Act: Valid Existing Rights--Alaska Native Claims Settlement Act: Conveyances: Reconveyances

A Native community association asserting that it used and occupied lands later claimed as a Native allotment must protest the allotment application pursuant
to sec. 905(a)(5) of ANILCA in order to have its claim adjudicated. In the absence of a timely protest, legislative approval of the allotment application occurs, and the village selection application, through which the Native community association claims reconveyance rights, must be rejected insofar as it conflicts with the allotment.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Stebbins Community Association has filed a notice of appeal from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated November 29, 1988, rejecting in part village selection F-14939-C and confirming legislative approval of Native allotment F-16407.

At issue here are lands in sec. 19, T. 25 S., R. 19 W., Kateel River Meridian, Alaska. Parcel A of Native allotment F-16407, filed by the Bureau of Indian Affairs on behalf of Joseph O. Washington, consists of 80 acres located in this section. Although it does not specify precisely where they are situated, Stebbins Community Association evidently has a reindeer corral and house on or near Parcel A.

Washington's application recites that he began use of the parcel in July 1960 for hunting and fishing. Although a BLM field examination in July 1973 revealed no visible evidence of Washington's use and occupancy, BLM held on November 29, 1988, that Washington's application had been legislatively approved by Congress on December 2, 1980.

On October 25, 1974, the Stebbins Native Corporation, which is not a party to this appeal, filed village selection application F-14939-C under the provisions of section 12 of the Alaska Native Claims Settlement Act
of 1971 (ANCSA), 43 U.S.C. § 1611 (1988), for lands including Parcel A of Washington's allotment. Stebbins Community Association's (appellant's) interest in Parcel A is based on its claim for reconveyance of lands from Stebbins Native Corporation under section 14(c)(2) of ANCSA, 43 U.S.C. § 1613(c)(2) (1988). That section requires a village corporation, upon receipt of patent for lands selected by it under 43 U.S.C. § 1611 (1988),
to "convey to the occupant * * * title to the surface estate in any tract occupied as of December 18, 1971, by a nonprofit corporation." Appellant's reason for invoking section 14(c) is set forth in its statement of reasons on appeal:

> The reason for this appeal is because Stebbins Community Association has a 14 c 2 claim under the Corporation's 14 c program required by the Alaska Native Claims Settlement Act. Stebbins Community Association had the Reindeer Corral in the vicinity and a House located in the co-ordinates above [sec. 19, T. 25 S., R. 19 W.] since the early 1950's or prior to Joseph O. Washington's claim and is still used in winter for Reindeer Operations and Husbandry. [1/]

This statement is the only reason set forth in the statement of reasons.

Appellant apparently never received a patent for lands sought by Washington. The record contains interim conveyance No. 549 from the
United States to Stebbins Native Corporation dated September 13, 1982,
but it expressly excluded lands described by Washington's Native allotment application. In a decision published March 26, 1982, in the Federal Register, BLM stated that excluded lands were not being approved at that time, but that such an exclusion did not constitute rejection of the selection application unless specifically so stated. 47 FR 13048, 13049.

BLM's decision of November 29, 1988, confirmed that Washington's Native allotment application had been legislatively approved and rejected Stebbins Native Corporation's village selection application insofar as it sought lands within the allotment.

[1] Section 905(a)(1) of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1634(a)(1) (1988), legislatively approved all Native allotment applications pending on or before December 18, 1971,

1/ Appellant's reference to reindeer husbandry suggests that it may have intended to cite section 14(c)(1) of ANCSA, 43 U.S.C. § 1613(c)(1) (1988), which requires a village corporation, upon receipt of patent for lands selected by it under 43 U.S.C. § 1611 (1988), to "first convey to any Native or non-Native occupant * * * title to the surface estate in the tract occupied as of Dec. 18, 1971 * * * as headquarters for reindeer husbandry."

where a protest was not filed within 180 days following enactment of ANILCA. 2/ This statute provides:

> (1) Subject to valid existing rights, all Alaska Native allotment applications made pursuant to the Act of May 17, 1906 (34 Stat. 197, as amended) which were pending before the Department of the Interior on or before December 18, 1971, and which describe either land that was unreserved on December 13, 1968, or land within the National Petroleum Reserve--Alaska (then identified as Naval Petroleum Reserve No. 4) are hereby approved on the one hundred and eightieth day following December 2, 1980, except where provided otherwise by paragraph (3), (4), (5), or (6) of this subsection * * *.

ANILCA provided that legislative approval would not occur in certain circumstances:

> (5) Paragraph (1) of this subsection and subsection (d) of this section shall not apply and the Native allotment application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, if on or before the one hundred and eightieth day following December 2, 1980--
>
> (A) A Native Corporation files a protest with the Secretary stating that the applicant is not entitled to the land described in the allotment application, and said land is withdrawn for selection by the Corporation pursuant to the Alaska Native Claims Settlement Act; or
>
> (B) The State of Alaska files a protest with the Secretary stating that the land described in the allotment application is necessary for access to lands owned by the United States, the State of Alaska, or a political subdivision of the State of Alaska, to resources located thereon, or to a public body of water regularly employed for transportation purposes, and the protest states with specificity the facts upon which the conclusions concerning access are based and that no reasonable alternatives for access exist; or
>
> (C) A person or entity files a protest with the Secretary stating that the applicant is not entitled to the land described in the allotment application and that the said land is the situs of improvements claimed by the person or entity.

43 U.S.C. § 1634(a)(5) (1988).

Appellant, which by its own statement was in existence prior to ANILCA, could have protested legislative approval of Washington's Native allotment

2/ ANILCA was enacted on Dec. 2, 1980. Thus, the time for filing a protest expired in May 1981.

application F-16407 pursuant to section 905(a) of ANILCA, but did not. 3/ No protest having been filed, legislative approval of F-16407 occurred, and this action precluded BLM from approving these same lands for conveyance under village selection F-14939-C. Rejection of F-14939-C was, therefore, appropriate insofar as Washington's allotment lands were described therein. See Torgramsen v. Heirs of Carlson, 96 IBLA 209 (1987). 4/

Therefore, pursuant to this authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Alaska State Office is affirmed.

David L. Hughes
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

3/ The subsection of ANILCA that would control the filing of the protest would depend on whether appellant, which apparently is a Native group,
falls within the definition of "Native Corporation" under section 3(m) of ANILCA, 43 U.S.C. § 1602(m) (1988). If so, the governing section would
be section 905(a)(5)(A) of ANILCA, which authorized a protest by "a Native Corporation * * * stating that the applicant is not entitled to the land described in the allotment application and that said land is withdrawn for selection by the Corporation pursuant to" ANCSA. 43 U.S.C. § 1634(a)(5)(A) (1988). If not, appellant was still required to file a protest under section 905(a)(5)(C), which authorized a protest by "a person or entity" that charges that land is "the situs of improvements claimed by the person or entity."

4/ We held in that case that a timely protest was necessary to assert a claim under section 14(c) of ANCSA. Citing State of Alaska v. Heirs of Dinah Albert, 90 IBLA 14, 20 (1985), we stated that the intent of ANILCA's section 905(a) would be frustrated by allowing a party to come forward after the statutory imposed time limit and attempt to defeat a Native allotment legislatively approved by ANILCA.